

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**October 19, 2000**

**IN RE:**

<b>GENERIC DOCKET TO ESTABLISH UNE PRICES</b>	)	
<b>FOR LINE SHARING PER FCC 99-355, AND RISER</b>	)	
<b>CABLE AND TERMINATING WIRE AS ORDERED</b>	)	<b>DOCKET NO.</b>
<b>IN TRA DOCKET 98-00123</b>	)	<b>00-00544</b>

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**ORDER DENYING MOTION TO TAKE DEPOSITIONS AND  
REQUEST TO CONTINUE AS MODIFIED**

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This matter came before the Pre-Hearing Officer upon the *Motion to Take Depositions* filed on behalf of the Data Coalition<sup>1</sup> on October 13, 2000 and the request to continue the Hearing until Tuesday, November 28, 2000 at 9:00 a.m. filed by BellSouth Telecommunications, Inc. ("BellSouth") on October 16, 2000.

**MOTION TO TAKE DEPOSITIONS**

In its motion, the Data Coalition explains that it wishes to take the depositions of a BellSouth employee, Tommy Williams, and of one or more subject matter experts of BellSouth. The Data Coalition contends that it "will not be able to obtain sufficient information concerning BellSouth's Operational Support Systems for line sharing without these depositions." In addition, the Data Coalition argues that the depositions will provide the Authority with necessary information and will facilitate a shorter hearing.

BellSouth filed a response to the *Motion to Take Depositions* on October 17, 2000. BellSouth argued that the motion should be denied because the motion is premature, depositions

are unnecessary, and the request violates the procedural schedule contained in the Pre-Hearing Officer's August 10, 2000 Order. BellSouth specifically argued that the motion is premature in that the Data Coalition filed the motion prior to receiving BellSouth's written responses to discovery requests or its pre-filed testimony. BellSouth also contended that the depositions are not necessary because BellSouth will proffer a competent witness to testify at the Hearing and because BellSouth agreed during the August 3, 2000 Pre-Hearing Conference that it would provide the parties with discovery responses and deposition transcripts from similar proceedings in other states. Finally, BellSouth asserted that the motion violates the August 10<sup>th</sup> Order in that the parties agreed to a procedural schedule that did not include depositions.

It is the finding of the Pre-Hearing Officer that the Data Coalition's motion should be denied. The Data Coalition's motion is premature because it was filed before BellSouth filed its discovery responses in accordance with the schedule agreed to by the parties and approved by the Pre-Hearing Officer. Further, BellSouth has not yet filed testimony in this docket.<sup>2</sup>

#### **REQUEST TO CONTINUE HEARING**

On October 16, 2000, BellSouth submitted a letter to the Authority wherein, BellSouth requested that the Pre-Hearing Officer continue the start of the Hearing from November 27, 2000 until November 28, 2000. BellSouth stated that "the parties have lawyers and witnesses traveling from out of town and would greatly appreciate not having to travel on the Sunday following Thanksgiving." In addition, BellSouth stated that it had contacted the other parties and "[n]o one has objected." Finally, BellSouth noted that counsel for BlueStar Networks, Inc and

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<sup>1</sup> The Data Coalition includes BlueStar Networks, Inc., DIECA Communications, d/b/a Covad Communications, Broadslate Networks of Tennessee, Inc., and Vectris Telecom, Inc.

<sup>2</sup> It should be noted, however, that in its response to the Data Coalition's motion, BellSouth states that it "intends to proffer a witness competent to testify about this subject."

DIECA Communications, Inc. d/b/a Covad Communications Company did request that, if the case is continued, these parties be allowed to present one of its witnesses, Mike Zulovic, first on Tuesday, November 28, 2000 due to schedule conflicts.

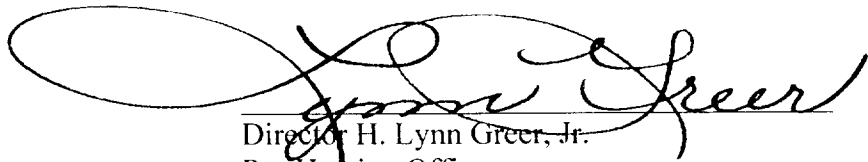
It is the finding of the Pre-Hearing Officer that BellSouth's request should be denied. The Hearing in this case is scheduled to begin on Monday November 27, 2000 at 9:00 a.m. If the case is not concluded by Friday, December 1, 2000, it is very likely that the Authority will not be able to reconvene the Hearing until after the first of the year. Also, the parties agreed to the procedural schedule that included the Hearing dates during the August 3, 2000 Pre-Hearing Conference.<sup>3</sup> For these reasons, it is the opinion of the Pre-Hearing Officer that the Authority should use all previously, scheduled time to ensure the completion of this case by December 1, 2000.

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<sup>3</sup> See *Transcript of Pre-Hearing Conference*, p. 68-71 (August 3, 2000). This discussion is distinguishable from the discussion related to the *Motion to Take Depositions* in that the parties did not agree that the parties could or could not conduct depositions. The parties did, however, agree to the Hearing dates.

**IT IS THEREFORE ORDERED THAT:**

- 1) The *Motion to Take Depositions* filed by the Data Coalition on October 13, 2000 is denied.
- 2) The request of BellSouth Telecommunications, Inc., contained in its October 16, 2000 letter, is denied. The Hearing in this matter shall commence as scheduled, on Monday, November 27, 2000 at 9:00 a.m.
- 3) As requested by counsel for BlueStar Networks, Inc and DIECA Communications, Inc. d/b/a Covad Communications Company, its witnesses, Mike Zulovic, shall be permitted to testify at the start of the Hearing.
- 4) Any party aggrieved by this Order may file a Petition for Reconsideration to be heard by the Pre-Hearing Officer pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of this Order.



Director H. Lynn Greer, Jr.  
Pre-Hearing Officer

ATTEST:



K. David Waddell, Executive Secretary